

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 90-004-E - ORDER NO. 93-721 ✓  
AUGUST 10, 1993

IN RE:	Semi-annual Hearing to Review the	)	ORDER DENYING
	Fuel Purchasing Practices and	)	PETITION FOR
	Policies of Carolina Power & Light	)	REHEARING AND
	Company	)	RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the Commission) on Nucor Steel, a Division of Nucor Corporation's, (Nucor's) Petition for Rehearing and Reconsideration of Order No. 93-578 (June 29, 1993). Order No. 93-578 was issued as a result of the remand instructions of the Honorable Walter J. Bristow, Jr. After review of Nucor's Petition, Carolina Power & Light's (CP&L's) response, Order No. 93-578, and the applicable law, the Commission finds and concludes that Nucor's Petition should be denied for the reasons addressed below.

In addition, Nucor requests that the Commission address the adjustment to CP&L's cumulative recovery account to reflect the disallowance of fuel costs as required by the South Carolina Supreme Court in Nucor Steel v South Carolina Public Service Commission, \_\_\_\_ S.C. \_\_\_\_, 426 S.E.2d 319 (1992). The Commission concludes that it will address the adjustment to CP&L's fuel

recovery account in CP&L's upcoming fuel proceeding.<sup>1</sup>

As noted in Order No. 93-578, Judge Bristow remanded the issue of the prudence of CP&L's operation of Robinson Unit 2 at 60% power from February 26, 1990 until July 13, 1990. Judge Bristow remanded this issue with the following instructions to the Commission:

The Court remands this issue to the Commission for its consideration of the [Nucor's] testimony and ruling on the Robinson outage. This consideration should include giving the testimony whatever weight it deems appropriate, consistent with applicable law. The Commission is to base its decision on the testimony presently of record, including the excluded testimony, and no additional evidence is to be presented or considered.

In accordance with Judge Bristow's instructions, the Commission reviewed Nucor's testimony. See Order No. 93-578, page 4. The Commission concluded, however, that the testimony from witnesses Coates and Sheely from the prior fuel proceeding was more persuasive and, consequently, affirmed its decision that operation of Robinson Unit 2 at 60% power was not imprudent. See Order No. 93-578, Page 1.

In its Petition for Rehearing and Reconsideration, Nucor asserts that, under the terms of Judge Bristow's order, the Commission was precluded from considering evidence from a prior fuel proceeding. Nucor further contends that the Commission improperly applied collateral estoppel principles in Order No. 93-578. The Commission disagrees.

The Commission concludes it was appropriate to consider

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1. Docket No. 93-002-E.

testimony from the prior CP&L fuel proceeding. If Judge Bristow had intended to prohibit the Commission from considering prior testimony, he would have simply reversed the Commission's original decision because the only evidence of record regarding the operation of Robinson Unit 2 at 60% power in the current proceeding was that presented by Nucor. Instead, Judge Bristow remanded this matter in order for the Commission to determine the prudence of CP&L's operational decisions.

Moreover, Nucor had a full and fair opportunity to participate as a party of record in Docket No. 90-002-E but chose not to do so.<sup>2</sup> Nucor instead elected to participate in the subsequent fuel proceeding, Docket No. 90-004-E, and challenge the Commission's decision concerning a prior review period in Docket No. 90-002-E.<sup>3</sup> The Commission finds that, because of the need for finality in the regulatory process, the Commission properly concluded in Docket No. 90-004-E that CP&L's operation of Robinson Unit 2 at reduced power was prudent.

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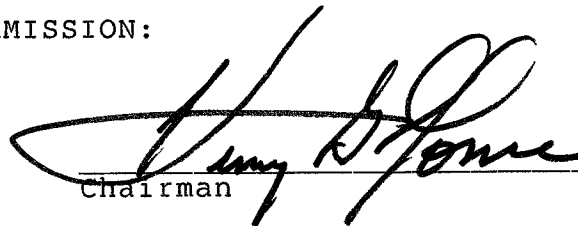
2. Pursuant to S.C. Code Ann. §58-27-865(A)(Supp. 1992) all utility customers are notified of the fuel recovery proceedings. Nucor filed a Petition to Intervene in Docket No. 90-002-E but later withdrew its intervention.

3. As admitted by Nucor in its Petition, "the reduced operations at Robinson were indirectly caused by an outage which occurred in 1989." Petition, page 2.

Accordingly, Nucor's Petition for Rehearing and Reconsideration is denied. As noted in this Order, the Commission will address the adjustment to CP&L's fuel recovery account, as ordered by the Supreme Court, in Docket No. 93-002-E.

IT IS SO ORDERED,

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)